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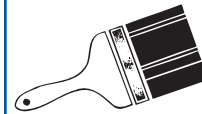
Broward County Bar Association BARRISTER

November 2007

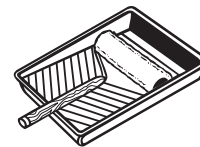
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VOLUME 36, ISSUE 11

Hold the Date Friday, November 16, 2007 Bring Your Paintbrushes!



The Law Week Committee Habitat for Humanity House Building Event. B'nai B'rith is a co-sponsor for this event spearheaded by the Jewish Federation with the involvement of the Broward County Bar Association, T.J. Reddick Bar Association, Puerto Rican Bar Association, Broward County Hispanic Bar Association, Broward County Women Lawyers Association, Caribbean Bar Association, and the Broward County Trial Lawyers Association. Friday, November 16 from 8:00 to 12:30 p.m. Call Robin Moselle at (954) 587-1968x923 or rsm@floridacollections.com.



Hold the Date Friday, December 14, 5:30 p.m. BCBA Holiday Party Norma B. Howard Bar Center Sponsorship Opportunities Available

Neill LeCorgne, President and Chief Operating Officer of Regent Bank presents Annual Sponsorship check to BCBA President Barbara K. Sunshine.

HOLD THE DATE Legal Malpractice and How to Avoid it. Thursday, November 8

See page 17



JUDICIAL EVALUATION SURVEY COMMITTEE GOES INTO ACTION

by Bruce Weihe

The Broward Bar has had an irregular but valued history of preparing, conducting, tabulating, and publishing the results of judicial evaluation surveys (formerly "polls"), with participation by members of The Florida Bar practicing in Broward County, for the benefit of the judiciary and the public.

This year's survey in all probability will be conducted shortly after judicial candidates must qualify for election at the end of April, 2008, according to Bruce Weihe, chair of the Bar's evaluation survey

committee. "One objective will be to obtain meaningful information that may assist the public at the voting booth", said Weihe, "but perhaps more importantly the survey should create a vehicle for Bar members to provide constructive criticism in a positive way for the judiciary."

Broward Bar Board members Michele Cavallaro, Todd McPharlin, and John Primeau serve on the evaluation survey committee. If any Bar members would like to offer ideas for the Committee regarding areas of inquiry, ring security and reliability of the process, and expanding participation among lawyers having meaningful contact with the judiciary, please forward your suggestions to Bruce Weihe at bweihe@sszrlaw.com.

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PRESIDENT'S MESSAGE by Barbara K.

BOARD RETREAT

You've seen the photos, but not heard about it. Paul Finizio who was on Student Government with me at Nova, agreed to act as Facilitator. He was energetic and helped pump us up. We agreed that we need to continue working to improve the "Barrister," and move towards a bi-weekly e-newsletter with current events, member news like birthdays, trips, new babies, special occasions, job postings, and real estate listings. We want the Website to be better—with postings of suspensions of motion calendars and current appellate decisions. We will communicate with the other voluntary bar associations and post their events in the "Barrister." We need to represent all of The Florida Bar members in Broward as a unified voice, and we need to promote the public image of lawyers. Membership is looking into group rates for insurance, mentoring, networking, automatic renewal by credit card, and other incentives for members. We will continue to look for corporate sponsors for events and perhaps, travel. We want to explore law office management seminars which would include the practical economics of a law office—start up needs and transition needs; risk management. Maybe we should have Kiosk stations in the Courthouse for attorneys and the public to have access to the Website and other information. Is there a perception that the Board consists only of "power people"? We don't want the members to see us that way. That was one reason we expanded the Bylaws to more geographical areas. Call your local representatives and give them your ideas and concerns. We are striving to update the buildings so that they represent the epicenter of the Broward Bar—for all lawyers to use. Not just members.

PARKING

The Board has been working on the parking situation ever since the rate was raised to \$8 an hour. We have talked with valet services that could use our lot and others and then shuttle people to the Courthouse. We have an office for rent at the Bar Center which includes parking (\$750). I thought a firm from the far reaches of the county would snap it up. If only for the free parking that comes with it. We are only four blocks from the Courthouse.

HOLIDAYS

Please mark your calendars for our Holiday Party

for Friday, December 14 at 5:30. Bring a gift for the Young Lawyers' Section Christmas in January. Thanksgiving through New Year's can be stressful if you have a lot of shopping or decorating to do. I really look forward to it because Samantha comes home. We go to the spa and shop Sawgrass on December 26. We got there at 9:00 a.m. one year. A mistake. Now we go at the crack of dawn. Bill joins us for "linner" at 3:00.

FUNSHINE 7/25/92-9/27/07

My darling Shih Tzu died in September. Funshine was her registered name. Funny was what we called her for over 15 years. She traveled with us to Michigan and Ohio, Portland, Seattle, Vancouver, New York, Captiva, Sanibel, Disney, Ft. Myers, St. Petersburg, Islamorada, Key West. She even came with me to visit Samantha in Los Angeles. I carried her in a bag under the plane seat. Never a whimper out of her. I knew she wouldn't live forever, but I wanted her to... Rest in peace, Funny.

The Broward Barrister is published by the Broward County Bar Association as a part of our commitment to provide membership with information relating to issues and concerns on the local level. Opinions and positions expressed in the signed materials are those of the author and may not necessarily reflect the views of this publication or the Broward County Bar Association.

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FREE PICK-UP AND DELIVERY

Thursday, November 1

Clerk/Bar Committee Meeting. Noon. Public Defender's Office. Third Floor, Courthouse.

Saturday, November 3

Puerto Rican Bar Association of Florida 5th Annual Installation Dinner/Gala. 7:00 p.m. Ritz-Carlton Coconut Grove, 3300 Southwest Twenty-Seventh Avenue, Miami. \$125. **Hector Rivera (305) 789-9226 or hrivera@fowler-white.com**

Monday, November 5

Florida Grievance Committee Meeting (17G). 2:00 p.m. Norma B. Howard Bar Center.

Tuesday, November 6

Broward County Trial Lawyers Association. 5:30 p.m. Tower Club. \$45. **(954) 522-1662 or bctla@att.net**

Wednesday, November 7

Retirement Distribution Planning 72(t) and 72. Noon. Norma B. Howard Bar Center. Lunch provided. **Myles German, Financial Advisor (561) 961-9334**

Thursday, November 8

Legal Malpractice Seminar. 1:00 to 4:30 p.m. Norma B. Howard Bar Center. **(954) 764-8040**

Thursday, November 8

Broward County Hispanic Bar Association. Reception for BCC President J. David Armstrong, Jr. 5:30 - 7:30 p.m. Willis Holcombe Center, BCC Room 1208, Downtown Ft. Lauderdale Campus. **For more information: (954) 201-8512**

Tuesday, November 13

North Broward Bar Association Luncheon. Noon. Steak & Ale Restaurant, 6300 North Andrews Avenue. **Alan Fishman (954) 975-7800**

Tuesday, November 13

Board of Directors' meeting. 5:00 p.m. Norma B. Howard Bar Center.

Wednesday, November 14

B'nai B'rith Justice Unit Author's Event featuring Mel Taylor. 5:30 p.m. Northern Trust Bank, 1100 East Las Olas Boulevard. **RichardSachs@JusticeUnit.Org**

Wednesday, November 14

Solo/Small Firm Networking Dinner
See page 22 for details

Thursday November 15

Lunch will be a very worthwhile luncheon for new attorneys and attorneys that are looking to start their own

practice. It will be a panel discussion titled "The Nuts and Bolts of Starting Your Own Firm". Frank Wagner of BNY Mellon and Michael O'Rourke of Berenfeld, Spritzer, Schechter & Sheer will be respectively discussing the banking and accounting aspects of starting your own firm.

Friday, November 16

Habitat for Humanity House Building Event. BCBA, B'nai B'rith, Broward County Hispanic Bar Association, Broward County Trial Lawyers Association, Broward County Women Lawyers Association, Caribbean Bar Association, Jewish Federation, Puerto Rican Bar Association, T.J. Reddick Bar Association. 8:00 to 12:30 p.m.

Tuesday, November 20

Bench/Bar Committee Meeting. Noon. Norma B. Howard Bar Center. **(954) 764-8040**

Tuesday, November 20

Florida Grievance Committee Meeting (17H). 2:00 p.m. Norma B. Howard Bar Center.

Thursday, November 22

Thanksgiving. Court holiday.

Friday, November 23

Court holiday.

Wednesday, November 28

Broward County Bar Association Board of Directors' and Past Presidents' Luncheon. 11:45 a.m. Riverside Hotel. **(954) 764-8040**

Wednesday, November 28

Young Lawyers' Section Board of Directors' Meeting. 5:30 p.m. Norma B. Howard Bar Center.

Monday, November 29

Federal Bar Association Luncheon. Noon. Riverside Hotel. Guest Speaker: US District Chief Judge Moreno. Prepaid: \$30 members; \$35 non-members; \$15 judiciary—send check to Paul Lopez, Tripp Scott, Republic Tower, 15th Floor, 110 Southeast Sixth Street, Ft. Lauderdale, FL 33301-5005. ctobin@abravermanlaw.com

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Message From Broward County Bar Association's

October was a tremendously successful month for the Young Lawyers' Section. We want to thank everyone who helped make the 20th Annual Golf Tournament a great success! As you are likely aware from previous Barrister Articles, Healthy Mothers-Healthy Babies Coalition of Broward County was this year's beneficiary. Ellen Anderson and the rest of the HM-HB staff really helped to pull things together and mentioned how appreciative they were to everyone who helped raise a lot of money for a most deserving and worth charity. A check will be presented to HM-HB at our December 13, 2007 luncheon. On behalf of the YLS, I would personally like to thank David Hirschberg for his continued hard work and dedication in planning and running the golf tournament, which is certainly no easy task. Since taking over as chair of the Golf Tournament several years ago, David has done an amazing job in raising unprecedented amounts of money and ensuring that the event runs smoothly. I would also like to specially thank the rest of the golf tournament committee and YLS board members for their help in assisting David with the event, as well as showing up at the crack of dawn on the day of the tournament! This year's winners are: 1st Place—Judge Pedro Dijols, Billy Direnzo and Jim Weick; 2nd Place—Mike Coleman, Remonde Lopez, Samuel Lopez and Lizabeth Peretra; 3rd Place—Scott Chitoff, Chris Gruchacz, Ralph Levinson and Frank Wagner.

The first YLS Happy Hour of the year was held at Himarrshee Bar & Grille for the benefit of the Golf Tournament and had a great turnout. We would also like to thank everyone who showed up to the happy hour to make a donation, network and have an all around good time for their support!

We are also very excited to announce that Judge Pedro Dijols has accepted the YLS' invitation to serve as its Judicial Liaison! We believe that Judge Dijols is a fantastic choice to serve as a conduit in terms of relaying expectations and creating a strong bond between Broward County young lawyers and judges. Judge Dijols has always been a big supporter of the YLS and has attended many of our events, not to mention his team was this year's first place winner at the 20th Annual Golf Tournament!

The YLS would like to thank Karen Unger for her

presentation on electronic discovery at the October 25th luncheon. Ms. Unger is a nationally recognized expert with American Document Management (ADM), which happens to be one of our annual sponsors. The luncheon was very informative and, of course, the CLE credit always comes in handy! It is one of the few times I have seen a speaker keep a room full of attorneys speechless throughout the presentation!

The November 15, 2007 lunch will be a very worthwhile luncheon for new attorneys and attorneys that are looking to start their own practice. It will be a panel discussion titled "The Nuts and Bolts of Starting Your Own Firm". Frank Wagner of BNY Mellon and Michael O'Rourke of Berenfeld, Spritzer, Schechter & Sheer will be respectively discussing the banking and accounting aspects of starting your own firm. We are thankful to BNY Mellon and Berenfeld, et al for their annual sponsorship and look forward to their panel discussion. Eric Guinness will be on the panel and will be discussing his experiences as an attorney who has been on his own for approximately one year. Also present on the panel will be Margaret Grisdela who is a legal marketing consultant. We also anticipate having an attorney with more than 10 years of experience. Our very own YLS Board member, Bart Ostrzenski, who opened his own firm about 5 years ago will be the moderator. This will be an interesting topic that you will not want to miss! We are applying for 1 C.L.E. credit. R.S.V.P.'s can be made to the BCBA at 954-764-8040. The cost for attendance is \$25.00 per person and lunch will be buffet style!

The holiday season just would not be the same without the Dillard High School Choir getting everyone in the holiday spirit! Please join us at 12:00 p.m. on Thursday, December 13, 2007 at the Tower Club for a truly amazing and memorable performance in what has become an annual YLS holiday tradition! The cost for attendance is also \$25.00 per person. R.S.V.P.'s can be made to the BCBA at 954-764-8040.

Remember, you do not have to be young or a lawyer to attend our events! As always, should you have any questions, please do not hesitate to contact Chris D. Connally (Connally@bktriallaw.com).



RECENT DEVELOPMENTS IN THE LAW

by Nancy Little Hoffmann

Attorney's Fees/Retroactivity of 57.105 Amendment

Hampton v. Cale of Ft. Myers, Inc.,
32 Fla. L. Weekly D2251 (Fla. 4th DCA September 19, 2007).

The Fourth District has held that the 2002 Amendment to Section 57.105, Fla.

Stats., which requires 21 days' notice to the non-moving party to withdraw a challenged claim or defense, is not retroactive. Although the court had in a prior case described the amendment as a "procedural change," that case did not involve the retroactivity issue. Squarely faced with the issue in this case, the Fourth District held that although the amendment has procedural aspects, it affected substantial rights and thus could not be retroactively applied.

Dissolution of Marriage/Shared Parental Responsibility

Watt v. Watt, __ Fla. L. Weekly __, Case No.: 4D06-720 & 4D06-2352 (Fla. 4th DCA October 3, 2007).

In this dissolution proceeding the parties agreed to shared parental responsibility of the children, including educational decisions. Thereafter they were unable to agree regarding their son's private school, and the mother moved to modify the final judgment. The Fourth District held that the parties' inability to agree constituted a substantial change in circumstances not contemplated at the time of dissolution, and that the trial court correctly modified the judgment to provide that the mother would be given the ultimate responsibility to make those decisions.

Insurance/Valued Policy Law

Florida Farm Bureau Casualty Ins. Co. v. Cox,
32 Fla. L. Weekly S564 (Fla. September 20, 2007).

In a case arising out of damage cause by Hurricane Ivan, the supreme court held that section 627.702(1), Fla. Stats., the "valued policy law," does not require an insurer to pay the face amount of the policy to an owner of a building deemed a total loss, when the building is damaged in part by a covered peril but is significantly damaged by an excluded peril as well.

New Trial/Quotient Verdict

Greens To You, Inc. v. Gavelek,

__ Fla. L. Weekly __ Case No.: 3D05-2846 (Fla. 3rd DCA October 3, 2007).

In affirming a new trial order finding that the jurors had impermissibly agreed to a quotient verdict, the Third District stressed the necessity of establishing not merely that the jurors used the quotient process, but that the jurors agreed to do so prior to calculating the figure. The court held that the appellant had established those facts in this case by the required clear and convincing level of proof.

Rental Car Liability

Kumarsing v. PV Holding Corporation,

__ Fla. L. Weekly __ Case No.: 3D06-2791 (Fla. 3rd DCA October 3, 2007).

The Third District has rejected a challenge to 49 U.S.C. Sec. 30106, the federal statute immunizing rental car companies from vicarious liability for damages resulting from operation of a rental car (the "Graves Amendment"). The court held that the federal statute "supersedes and abolishes all state vicarious liability laws as they apply to lessors of motor vehicles for causes of action that arose after [August 10, 2005]."

Procedure/Forum Non Conveniens

Fihe v. Rexall Sundown, Inc.,

__ Fla. L. Weekly __ (Fla. 4th DCA 4D06-100 August 29, 2007)

The Fourth District reversed dismissal of a lawsuit based on *forum non conveniens*, because the defendants' motion to dismiss was filed outside the 60 day limitation in rule 1.061(g), Fla.R.Civ.P. The opinion made it clear that the trial court had no discretion to consider the issue, and that the limitation must be strictly enforced.

Procedure/Whether Case At Issue

Labor Ready Southeast, Inc. v. Australian Warehouses Condo Assn.,

32 Fla. L. Weekly D2022 (Fla. 4th DCA August 22, 2007).

Affirming a tenant eviction, the Fourth District wrote an opinion to address the application of rule 1.440, Fla.R.Civ.P., with respect to when an action is at issue and may be set for trial. The appellate court made it clear that it rejected an argument based on a "hyper-technical violation" of the rule, because the trial court allowed the plaintiff to amend its complaint to correct technical deficiencies. The court stressed that this was not a case where the parties did not have sufficient time to prepare, nor where anyone was prejudiced by the technical amendment. Although recognizing that it had held in other cases that the rule was mandatory, the Fourth District refused to reverse in this case because there was actual notice and everyone was ready for trial.

Voir Dire/Challenge for Cause

Four Wood Consulting, LLC v. Fyne,

32 Fla. L. Weekly D2020 (Fla. 4th DCA August 22, 2007).

In an opinion discussing the standard to be applied in determining whether a juror should be stricken for cause, the Fourth District concluded that where a juror's responses on a question of bias are conditional or equivocal, and the juror is not rehabilitated, a new trial is mandated where there is reasonable doubt as to whether the juror stands impartial. Although the trial court has great discretion, close calls must be resolved in favor of excusing the juror rather than leaving doubt as to impartiality.



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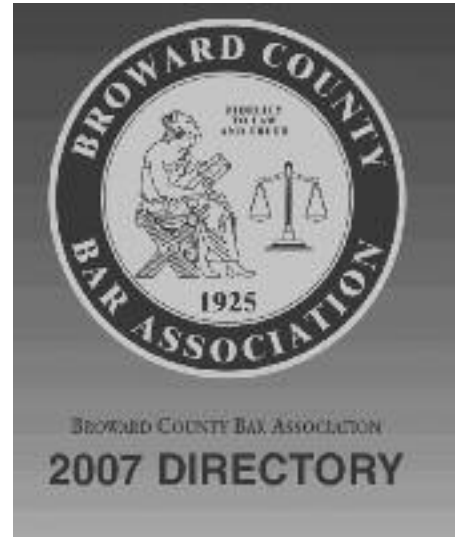
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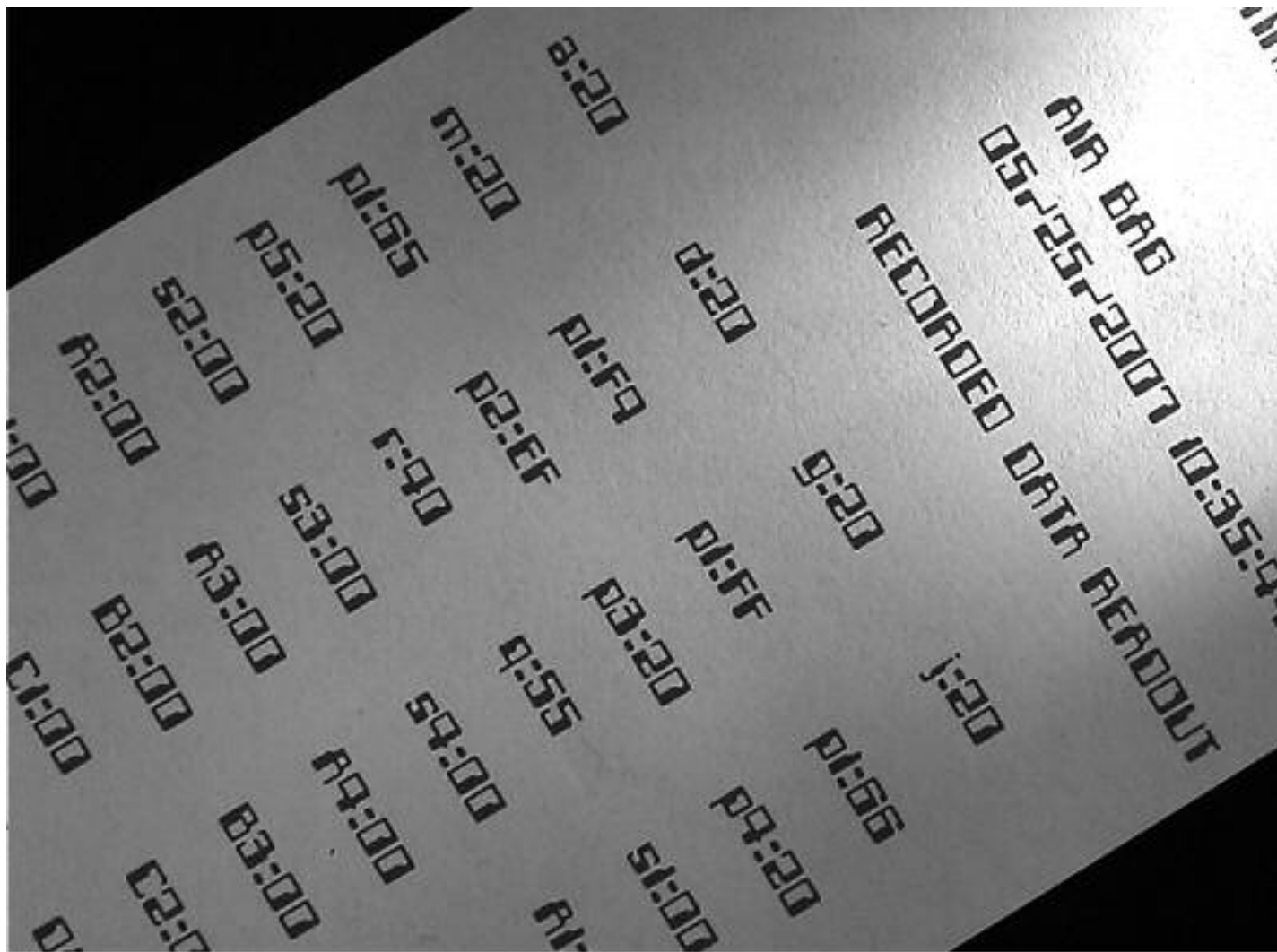
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TEENAGERS SEXUALLY HARASSED AT THEIR JOBS

Federal Government Reports An Increase In Complaints

by Loring N. Spolter, Esq.

If your teenager has a part-time or full-time job and is more moody than she or he has typically been, don't hastily assume that these behavior quirks are nothing to worry about.

The U.S. Equal Employment Opportunity Commission reports that teenagers, both male and female, are frequent targets of sexual harassment at fast food restaurants, movie theaters, construction companies and other low-paying workplaces, victimizing workers who are too young to even vote.¹ A 14-year-old was among those filing a sexual harassment complaint with this federal agency.² In fact, many of the complaints lodged with the EEOC and local police departments have come from the parents of teens, resulting from their sons and daughters being too embarrassed or intimidated to report the incidents themselves.³

Emotional Clues

The National Crime Prevention Council reports teenagers usually find it even more difficult than adults to come to grips with having been sexually harassed.⁴ For teenagers, NCPC determined, the "shock, shame and stigma" frequently become overwhelming, particularly when coupled with typical youthful concerns such as:

- * Fear that nobody will believe them,
- * Beliefs that they may be blamed or punished,
- * mistrust of adults,
- * Ignorance of potential legal remedies,
- * fear retaliation; and
- * Disbelief that anything will be done.⁵

Parents should be vigilant for certain behavioral "clues," — often subtle and difficult to detect — because they may simply be intensified forms of the same emotions typically exhibited by teens.⁶ Sexually harassed teens typically display at least "SOME" (what do you mean some? HOW MANY?) of what NCPC refers to as the "big four" symptoms:⁷

ISOLATION: Feeling different from the peer group, the teen drops this group of friends or finds that they have dropped him or her.⁸

HELPLESSNESS: The teen feels nothing can be done to change the situation. Nobody can or will help them, or no one cares about them.⁹

HOPELESSNESS: Loss of hope that life will return to normal or that the future will be better.¹⁰

POWERLESSNESS: The teen feels a lack of control or personal power.¹¹

A Large Scale Problem

Thirty-five percent of high school students holding jobs have been sexually harassed at work.¹² Well over a third of those sexually harassed were young males,¹³ with nineteen percent of all employed teenagers have been sexually harassed by supervisors or managers.¹⁴ Coworkers in the same age range accounted for 61% of on the job sexual harassment.¹⁵

The magnitude of the problem becomes clearer when considering that nearly 70% of teens 16 and 17 years of age in the United States hold jobs.¹⁶ According to an American Academy of Pediatrics' report on adolescent sexual assault victims, adolescents suffer the highest rates of rape and other sexual assaults of any age group.¹⁷ According to the NCPC

study, females and males between 16 – 19 (FIX DASH) years of age are more likely to become victims of sex crimes than any other age group.¹⁸

The psychological trauma associated with unwanted sex is not the only concern facing young people and their parents. According to a 2002 study published in Pediatric Emergency Care, 4.3 percent of female teens who had not taken part in any sexual activity in the three months prior to being assaulted eventually caught a sexually transmitted disease other than HIV.¹⁹ Of the young women who admitted to recent sexual activity, 14.4% acquired a sexually transmitted disease during the sexual assault itself.²⁰

According to the earlier cited AAP study, when female teens report non-consensual intercourse, they do so less promptly than adult females.²¹ This may explain why five percent of the young females having non-consensual intercourse become pregnant,²² with forced sexual intercourse leading to a 30 percent pregnancy rate among young women ovulating within two days after sex.²³ Ninety percent of these pregnancies were fathered by men who knew the women.²⁴ For young men and women, harassment involving sexual acts can also place them at risk for AIDS, though the potential for contracting HIV varies depending on the nature of the sexual contact.²⁵

Severe Emotional Consequences

Similar to employees in other age groups, teens who have been sexually harassed suffer emotional distress as well. While males and females exhibit many of same responses to verbal sexual humiliation and unwelcome physical advances, it is important to note that they react with a number of significant differences as well.²⁶

Female Teens: Young women respond to incidents with increases in alcohol consumption, but at lesser quantities than male victims.²⁷ Adolescent females are more prone to "internalizing behaviors" of depression and anxiety than males.²⁸ While young male victims may also feel anxious and depressed, females exhibit these symptoms at higher levels and with greater severity.²⁹ Females are more likely than males to blame themselves for the harassment, though the study questions whether this difference between the genders is as large as has been otherwise reported.³⁰ Also, compared to males who were sexually assaulted, this study determined that females possess a higher prevalence of post traumatic stress disorder, or PTSD.³¹ Those affected by PTSD may suffer from flashbacks, nightmares, avoidance of pleasurable activities, sleep difficulties, memory lapses, and appetite changes.³² The study further noted that these symptoms can sometimes take months to surface.³³

Because females are sexually harassed and exploited significantly more often than males, women benefit from their ability to bond with one another through showings of support and helping each other to cope with their experiences.³⁴

Male Teens: Males are less likely than females to report sexual mistreatment, often fearing others will think that they are gay.³⁵ This baseless fear arises frequently, despite the facts that most men who commit male-on-male sexual assaults consider themselves heterosexuals, and victimization is not ancillary to a change in sexual orientation.³⁶ When sexually victimized, young men may seek involvement in dangerous

“macho” activities.³⁷ Parents would be wise to discourage these “hyper-masculine” efforts of overcompensation.³⁸ Displays of anger and violence more often occur in young males targeted by sex offenses, as compared to females.³⁹

Male adolescents who have been sexually exploited are also at a greater risk of performing poorly in school, engaging in criminal or delinquent activities and participating in sexually irresponsible behaviors than females of the same age.⁴⁰ Extreme increases in the use of marijuana and alcohol were also common reactions exhibited by males experiencing sexual humiliation, they added.⁴¹

Additionally, young male victims attempt suicide more frequently than females, according to a 1997 study by the Journal of American Academy of Child and Adolescent Psychiatry CITE.⁴² Although they are usually in need of counseling, these adolescents are less likely to follow through with mental health therapy, believing those counseling them to be poorly equipped to assist males, the Canadian Foster Family Association reported in a study titled “The Invisible Boy.”⁴³

Consensual Sex with Underage Employees

Surprisingly, some judges believe employers should not be held civilly liable for having consensual sex with employees below the age of consent, disregarding statutory rape laws that make such conduct unlawful and punishable by lengthy prison sentences. Federal court judge John W. Darrah dismissed a lawsuit brought by a sixteen year-old girl who had worked as a “scooper” in an ice cream parlor, ignoring witness testimony that her twenty-five year old supervisor frequently groped and grabbed females during work.⁴⁴ While she was still employed, the girl had consensual sexual intercourse the supervisor which she later regretted. She subsequently reported him to local authorities, who arrested the supervisor on statutory rape charges. A criminal court judge sentenced him to prison;⁴⁵ however, ruling that the case lacked merit, partly because the teenage employee voluntarily consented to the supervisor’s desire to have sexual intercourse with her away from the store after work hours, Judge Durrar dismissed the sexual harassment lawsuit against the Oberweis Dairy.⁴⁶ On appeal, the court ruled that the case should proceed to trial, with Judge Richard Posner writing that managers and supervisors of underage workers “must exercise greater care than is required in a case of routine harassment by a coworker.”⁴⁷ Posner noted that other shift supervisors were aware of the supervisor’s sexually suggestive behavior with teenage “scoopers,” the supervisor was a known alcoholic, and frequently invited young employees to his apartment.⁴⁸ Employers of teenagers act at their own “peril,” Posner cautioned, when failing “to warn parents that they knew or should have known their children are a substantial risk of statutory rape” by an older supervisor. Filed under a generic name to protect the identity of the underage sex crime victim bringing the lawsuit, the case of *Jane Doe v. Oberweis Dairy* is now set for trial in February of 2008.

Nevertheless, not everyone in positions of authority adheres to Judge Posner’s reasoning. In a case litigated by my own firm, an EEOC investigator challenged the legal basis of our client’s sexual harassment complaint, because the then-fifteen year-old employee had consented to a long-term sexual affair with her supervisor CITE.⁴⁹ The investigator was either unaware of or disagreement with the EEOC’s policy that prohibits all sexual relationships between

supervisors and underage employees CITE. Rather than let the investigator proceed with the case, my firm obtained a “Right to Sue” letter, which removed the case from EEOC jurisdiction and enabled my firm to file the lawsuit CITE?.

Obtaining Justice

Typically with employment law cases, the employers eventually acquiesce to settlement agreements with the plaintiff. Unlike cases filed by private attorneys on behalf of employees (or the parents of underage employees), the outcomes of the relatively few cases that the EEOC chooses to act upon become public record, even when disputes are settled prior to trial. Listed below are the outcomes of several cases in which employers have settled claims initiated by the EEOC regarding supervisors who had sexually harassed employees under the age of eighteen.

Carmike Cinemas

Pretrial settlement where a movie theater company in North Carolina agreed to pay \$765,000 to 14 teenage males whose supervisor made sexual comments, groped them, and made sexual advances.⁵⁰

Burger King Franchise

\$400,000 paid to seven females, six of whom were high school students, for a supervisor who engaged in groping, sexual commentary and made demands for sexual favors. The St. Louis-area employer also violated the law by withholding training on how to internally file complaints of discrimination. After women did file internal complaints, the employer promoted the harasser to a restaurant manager position.⁵¹

Longhorn Steakhouse Franchise

\$200,000 was paid to three females, one of whom was a sixteen year-old high school student enrolled in an on the job training course. An assistant manager working at this Florida restaurant grabbed the employees’ breasts, inappropriately touched their hips and lower backs and make sexually charged comments.⁵²

McDonald’s Franchise

\$550,000 paid by a multi-state company owning fast food outlets to eight teenage women. EEOC charged that the manager had sexually harassed teens in more than one of the company’s restaurants in New Mexico and California.⁵³

Driveway Paving Company

Jurors awarded \$585,000 to thirteen young women, mostly of whom were teenagers, who were subject to sexual harassment from salespersons and managers, while others had resigned from the Rochester, NY employer for intolerable working conditions. \$260,000 of the jury reward was for punitive damages.⁵⁴

Bob Evans Restaurant

Missouri employer paid a \$250,000 settlement in a lawsuit brought by eight women claiming sexual harassment, including three teenagers. One of the teens was represented by a private attorney, whose fees were ordered paid by the employer, while the EEOC litigated on behalf of the other women.⁵⁵

Jack-In-the-Box Restaurant Chain

Five women, three under 21, filed an EEOC Charge of

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Our apologies to those few attorneys who had misinformation printed or whom were omitted, in part or in total, from our recent Directory.



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Suspension dates:

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Can be found by going to <http://www.pbcgov.com/cadmin/scripts/newsbord/UMC.pdf> .

Circuit Civil UMC cancellation dates: call the judge's chambers and press option #2

Administrative Order 3.009

Orders are to contain the subject matter in the heading
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Administrative Order 2.033

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Discrimination against a direct supervisor who subjected them to lewd remarks and sexual overtures at their Seattle job site.⁵⁶

L & L Wings Retail Store

The North Carolina owner/operator of this national chain of beach apparel stores paid \$115,000 to settle the claims of four teens, aged sixteen to eighteen, for making lewd comments about their bodies, questioning them about their sexual experiences, touching their buttocks and legs and propositioning them for sex.⁵⁷

LORING N. SPOLTER is a Fort Lauderdale attorney who practices in the field of employment law. His law office phone number is (954) 728-3494.

¹ Dina Berta, *EEOC: Industry Sued Most in Claims of Teen Harassment*, NATION'S RESTAURANT NEWS, Feb. 5, 2007, available at http://findarticles.com/p/articles/mi_m3190/is_6_41/ai_n17217095

² EEOC.gov, *EEOC Reaches Out to High Schoolers to Combat Workplace Harassment of Teens*, <http://www.eeoc.gov/press/12-15-04.html> (last visited July 9, 2007).

³ Paul Igasaki, *Civil Rights for Young Workers*, IGASAKI EEOCORNER, Dec. 2004, http://www.imdiversity.com/Villages/Careers/articles/igasaki_youngworker_s_1204.asp

⁴ NAT'L CRIME PREVENTION COUNCIL, THE OFFICE FOR VICTIMS OF CRIME, *Reaching and Serving Teen Victims: A Practical Handbook*, 1 (2005).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 11.

⁸ *Id.*

⁹ *Reaching and Serving Teen Victims*, 11.

¹⁰ *Id.*

¹¹ *Id.*

¹² KATE FOGARTY, TEENS AND SEXUAL HARASSMENT: MAKING A DIFFERENCE, 4 (Univ. of Fla. Inst. Of Food and Agric. Sci., 2006) (citing FINERAN, S., ADOLESCENTS AT WORK: GENDER ISSUES AND SEXUAL HARASSMENT, *Violence Against Women*, 8, 953-67 (2002)).

¹³ *Id.*

¹⁴ *Id.*

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¹⁶ Fogarty, *supra* note 12 (citing ARNETT, J.J., ADOLESCENCE AND EMERGING ADULTHOOD: A CULTURAL APPROACH (2d ed., Prentice Hall 2004).

¹⁷ Am. Acad. of Pediatrics, Comm. on Adolescence, *Care of the Adolescent Sexual Assault Victim*, 107 PEDIATRICS 1476, 1476 (2001).

¹⁸ NAT'L CRIME PREVENTION COUNCIL, THE OFFICE FOR VICTIMS OF CRIME, *supra* note 4.

¹⁹ Michael A. Poirier, *Care of the Female Adolescent Rape Victim*, 18 PEDIATRIC EMERGENCY CARE 53, 56 (2002) (citing Jenny, C., et al., *Sexually Transmitted Diseases in Victims of Rape*, 322 NEW ENG. J. MED. 713-16 (1990); Lacey, H.B., *Sexually Transmitted Diseases and Rape: The Experience of a Sexual Assault Centre*, 1 INT'L J. STDs & AIDS 405-9 (1990)).

²⁰ *Id.*

²¹ Am. Acad. of Pediatrics, Comm. on Adolescence, *supra* note 17, at 1477 (citing Muram, D., et al., *Adolescent Victims of Sexual Assault*, 17 J. ADOLESCENT HEALTH 372-375 (1995); Peipert, J.F. & Domagalski, L.R., *Epidemiology of Adolescent Sexual Assault*, 84 OB/GYN 867-871 (1994)).

²² Poirier, *supra* note 19, at 57 (citing Holmes, M.M., et al., *Rape-related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women*, 175 AM. J. OBSTETRICS & GYNECOLOGY 320-24 (1996)).

²³ *Id.* (citing Trussel, J., *Emergency Contraception: WHO Taskforce Study*, 352 LANCET 1222-3 (1998)).

²⁴ *Id.* at 57; *but see* sources cited *supra* note 22.

²⁵ *Id.* at 56 (citing CDC, *1998 Guidelines for Treatment of Sexually Transmitted Diseases*, 47 MMWR MORB. MORTAL. WKLY. REP. 108-11 (1998)(noting that the overall probability of HIV transmission from a single encounter depends on the type of intercourse, presence of trauma, site of exposure to infected bodily fluid, and the viral load of the infected fluid)).

²⁶ THE LEADERSHIP COUNCIL, THE EFFECTS OF CHILD SEXUAL ABUSE ON MALES, <http://www.leadershipcouncil.org/1/res/male.html> (last visited July 24, 2007) (citing 20 J.M. CHANDY ET AL., *Gender-specific Outcomes for Sexually Abused Adolescents*, in CHILD ABUSE & NEGLECT 1219-31 (1996)).

²⁷ *Id.*

²⁸ *Id.*

²⁹ David F. Tolin & Edna B. Foa, *Sex Differences in Trauma and Posttraumatic Stress Disorder: A Quantitative Review of 25 Years of Research*, in 132 PSYCHOLOGICAL BULLETIN 959, 959-92 (APA 2006).

³⁰ *Id.*

³¹ *Id.*

³² Michael P. Poirier, M.D., *Care of the Female Adolescent Rape Victim*, in 18 CME REVIEW ARTICLE 56, 53-59 (Pediatric Emergency Care 2002).

³³ *Id.*

³⁴ Australian Institute of Criminology, *Sexual Assault of Males*, in 2 WITHOUT CONSENT: CONFRONTING ADULT SEXUAL VIOLENCE 230 (1990).

³⁵ NAT'L CRIME PREVENTION COUNCIL, THE OFFICE FOR VICTIMS OF CRIME, *supra* note 4 at 10.

³⁶ Julia M. Whealin, Ph.D., *Men and Sexual Trauma*, NATIONAL CENTER FOR PTSD, available at http://www.ncptsd.va.gov/ncmain/ncdocs/fact_shts/fs_male_sexual_assault.html (last visited July 24, 2007).

³⁷ *Id.*

³⁸ *Id.*

³⁹ PSYCHOLOGICAL BULLETIN, *supra* note 29, at 979

⁴⁰ CHANDY ET AL., *supra* note 26.

⁴¹ *Id.*

⁴² THE LEADERSHIP COUNCIL, THE EFFECTS OF CHILD SEXUAL ABUSE ON MALES, *supra* note 26 (citing 36 GARNEFSKI, N. & DIEKSTRA, R.F., *Child Sexual Abuse and Emotional and Behavioral Problems in Adolescence: Gender Differences*, in JOURNAL OF AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY 323-29 (1997)).

⁴³ Frederick Mathews, Ph.D., *The Invisible Boy: Revisioning the Victimization of Male Children and Teens*, NATIONAL CLEARINGHOUSE ON FAMILY VIOLENCE (Can.), available at http://www.phac-aspc.gc.ca/ncfv-cnivf/familyviolence/html/nfntsxinvisible_e.html (last visited June 10, 2007).

⁴⁴ *Doe v. Oberweis Dairy*, 456 F.3d 704 (7th Cir. 2006)

⁴⁵ *Id.*

⁴⁶ *Id.* at 713.

⁴⁷ *Id.* at 717.

⁴⁸ *Id.* at 715.

⁴⁹ *Id.*

⁵⁰ *EEOC et. al v. Carmike Cinemas, Inc.*, Civil Action No. 5:04-CV-673-BO(1).

⁵¹ *EEOC v. Midamerica Hotels Corp.*, 2004 U.S. Dist. LEXIS 8169 (D.Mo. 2004).

⁵² Civil Action 8:02-CV-1770-T-30TBM

⁵³ *EEOC v. GLC Restaurants, Inc.*, d/b/a McDonald's Restaurant, Civil Action No. CIV- 05-0618-PCT-DGC

⁵⁴ *EEOC v. Everdry Mktg. & Mgmt.*, 2005 U.S. Dist. LEXIS 3884 (D.N.Y. 2005).

⁵⁵ *EEOC v. Bob Evans Farms, Inc.*, No. 4:04CV00622MLM (E.D. Mo. January 19, 2005)

⁵⁶ *EEOC v. Jack in the Box, Inc.*, No. CV03-814P

⁵⁷ available at

<http://www.wageproject.org/sexdiscDB/sexdiscDB.php?mode=full&id=52&info=outcome>

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Almost no one knows where or what it is, but the bronze bell from the 1928 Courthouse, its sole remaining artifact, is located in an obscure concrete plaza built in 1988 between the Main Courthouse and the judicial administration garage. Once atop a ninety-foot-tall octagonal tower joining the north and west wings of the Courthouse built in 1928 at the northwest corner of Southeast Sixth Street and Third Avenue, the bell clock tolled time from 1928 until 1960 when workers began plans to dismantle the tower during courthouse renovations.

The 1928 Courthouse almost had no tower clock and bell. Early in 1927, when county commissioners first considered local architect John Peterman's plans for a new courthouse to replace the first one on Andrews Avenue and Southwest 5th Street, commissioners balked at paying extra for a tower and clock. Commissioners had budgeted only \$375,000 for the new courthouse, a substantial sum at the time but funded by a bond issue that also financed State Road 7's construction. On November 2, 1927, however, commissioners decided to install the tower and clock for an additional \$15,903.15. The Seth Thomas Clock Company of Thomaston, Conn., supplied the clock and bell, one of thirty-two such tower clocks installed in the state of Florida from Jacksonville to Key West from 1877 until 1936.

The new courthouse opened to the public on May 24, 1927, to great acclaim. The ground floor housed maintenance and service rooms, automatic fire equipment, an incinerator, the sheriff's offices, the Boy Scouts headquarters, and a county engineer's storage room. The first floor, reached by a set of stairs rising from street level, housed the county agricultural agent, the county tax assessor and tax collector departments, the county clerk's office, and large fireproof vaults for storing county records and papers. The second floor accommodated the grand jury room, the school board's offices, the county prosecuting attorney's office, the county judge's chambers and a courtroom accommodating 75 participants and members of the public, the county commission's board room, the county auditor and bookkeeper, the county road department's offices, and the county engineer.

The Courthouse bell of 1928: Where is it?

by William G. Crawford, Jr.



The third floor provided space for a law library, the state attorney's office, the circuit judge's chambers and a circuit court room capable of seating 250, with travertine walls and a 21-foot ceiling. From an elevator lobby on the third floor, a private metal stairway led to the jail warden's quarters and a jail described by the *Fort Lauderdale Daily News* as "one of the finest in the state," with housing for 64 male and female prisoners, installed at a cost of \$64,000, an astounding sum at the time. Enclosed circular stairs led to the clock room and an observation balcony. The clock had four large five-point dials.

For more than three decades the courthouse clock kept time, more or less, and the bell tolled on the hour and half hour. On November 16, 1960, Frank J. Rooney Construction Co., began razing the tower and removing the clock and the large bronze bell. In April 1961, the contractor donated the bell to the City of Fort Lauderdale's Parks Department, which, in turn, installed the bell over the New River (Henry Kinney) Tunnel in a small grassy area east of Stranahan House on the north side of the New River. There it remained for some years when workers returned the bell to its rightful place and installed the bell on a wooden base in the Courthouse lobby.

In the late 1980s, however, county contractors moved the bell a third time to a rather nondescript plaza west of the Main Courthouse. The plaza garnered a city Community Appearance Award in 1989 for outstanding achievement in urban environmental design. The 1928 bronze bell hangs suspended fifteen feet in the air from a concrete frame structure in this harsh concrete-and-paver open space with benches but few shade trees. From all appearances, the plaza attracts more pigeons than people on most days. Worse, no plaque explains what the bell is or what it signifies. A plaque placed by the Broward County Bar Association on Law Day, May 1, 1987, in the Main Courthouse lobby commemorates the bell, but the plaque is inside the Courthouse – where the bell should be, protected and respected, as the sole remaining artifact from the 1928 Courthouse. It's part of our history.



William G. Crawford, Jr. is a shareholder in McDonald & Crawford, P.A., past president of the Fort Lauderdale Historical Society, and past chair and a longtime member of the Broward County Historical Commission



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Last year, the generosity of 33 adopters from firms, organizations and individuals provided 87 families that included 176 children, 12 senior citizens and 3 disabled persons with food, decorations, clothes, televisions, furniture, bikes and toys.

We wish to again thank all of last year's adopters that included: Akerman Senterfitt; Atkinson Diner Stone Mankuta & Ploucha; Barbara Beilly; Kelly Brown & Family; Bunnell Woulfe Kirschbaum Keller McIntyre Gregoire & Klein; the James & Maria Camp Family; Chorowski & Moore; Jordana Contrucci; Elizabeth Daugherty; Dolphin Democrats; Doumar Allsworth Laystrom Voigt Wachs MacIver & Adair; Teresa & Wayne Durando; Episcopal Church of St. Ann Junior Daughters of the King; Gladys Gerson; HASADDAH-Koach Chapter of the Greater Miami Region; Jerry Hert; Andy Hyman & Kathleen Thomsen; Jacobson Sobo & Moselle; the John Jordan Family; Justice Reporting - Karen Barton; Anthony Karrat & Family; Kirkpatrick Lockhart Preston Gates Ellis LLP; the Brooke & Robert Lochrie Family; Moody Jones Montefusco Ingino & Morehead; Michael & Gyl Pelissier; Jorge Pena; Pembroke Pines Fire Rescue-Santa's Express Project; Janet Riley; Soto Law Group; St. Thomas More Society; Gregory Starr; Frank & Kimberly Zaffere.

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- 12:00 pm - 1:00 pm **Luncheon - Keynote Speaker: Honorable Fred A. Hazouri, Fourth District Court of Appeal - "Professionalism and the Appellate Lawyer"**
- 1:00 pm - 1:15 pm **BREAK**
- 1:15 pm - 1:45 pm **"What Persuades the Decision-Makers? The Use of Secondary Authority in Briefs from the Perspective of the Judges" - Panel Discussion moderated by Honorable Martha C. Warner, Fourth District Court of Appeal**
- 1:45 pm - 2:15 pm **County to Circuit Appeals Pursuant to Florida Rules of Appellate Procedure 9.030(c) and 9.100(f) - Honorable Elizabeth T. Maass, Fifteenth Judicial Circuit**
County to Circuit Appeals Pursuant to Florida Rules of Appellate Procedure 9.030(c) and 9.100(f) - Honorable Dorian Damoorgian, Seventeenth Judicial Circuit
- 2:15 pm - 2:30 pm **BREAK**
- 2:30 pm - 3:00 pm **Standards of Review - Honorable Larry A. Klein, Fourth District Court of Appeal**
- 3:00 pm - 3:45 pm **Motions for Rehearing, Rehearing en Banc, and Certified Questions - Honorable Robert M. Gross, Fourth District Court of Appeal**
- 3:45 pm - 4:00 pm **BREAK**
- 4:00 pm - 5:00 pm **Panel Discussion with the Judges of the Fourth DCA, Moderated by Jack J. Aiello, Esq., Gunster, Yoakley & Stewart**
- 5:00 pm - 5:30 pm **Cocktail Reception**

This course is expected to receive **5.0 CLER, 1.0 Ethics credits** from The Florida Bar; Appellate Certification credit has been applied for and is pending approval.

The cost of the seminar, lunch and reception is **\$130** if registered by **11/29/07**; **\$155** after that date; **No refunds after 11/30/07**

If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25.

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At press time, these are the individuals who have made contributions this current fiscal year to our Mortgage Reduction program that was created to help BCBA pay down the mortgage on the Norma B. Howard Bar

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DATE : Thursday, November 8, 2007

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**LOCATION : Broward County Bar Assn.
1051 S. E. Third Avenue
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Topics Include :

- Trends in legal malpractice cases
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Email: hnyugen@welbaum.com

B'nai Brith Justice Unit

President: Judge Robert Rosenberg
Phone: 954-831-6021
Email: jrosenbe@17th.flcourts.org

Broward Association of Criminal Defense Lawyers

President: Eric Schwartzreich
Phone: 954-525-8000
Email: erictolin@bellsouth.net

Broward Christian Legal Society

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Email: esglaw@bellsouth.net

Broward County Women Lawyers

President: Tonja Haddad
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Caribbean Bar Association

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Email: pgordi@netscape.net

Cuban American Bar Association

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Federal Bar Association

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In September a majority of the leaders from the above named Voluntary Bar Associations met with the Broward County Bar Association. We are heading towards a trend where full participation by all benefits all. Becoming involved with one of these organizations is simple; reach out to the contact person! You do not have to be a woman to be part of the Association of Women Lawyers nor do you have to be Asian-Pacific to be part of the Asian Pacific American Bar Association; just reach out to the contact person! If you are already a member of one of the local voluntary bars, consider dual membership and join the Broward County Bar's 2,800 members. If the Broward Bar can help your organization in any way-you know what to do, just reach out to the contact person. I am the Broward County Bar's Liaison to the Voluntary Bars. Roshawn Banks, 954-747-1843(Office), 954-916-2601 (Fax), or rbanks@thealllawcenter.com.

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September 20, 2007

Photos by Nadine Barnett



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BCBA Hosts Local Bar Association Leaders October 18th

Photos by Mickey Kay



Left to right: Jorge Hurtado, BCBA Board member; Thomas Fallarino, Esquire Litigation Solutions; Diana Santa Maria, BCBA Board member; Art Goldberg, BCBA Executive Director; Jonathan Pavsner, Broward County Trial Lawyers Association; Andrew Winston, Broward County Trial Lawyers Association; Laura Silverman, Broward County Trial Lawyers Association Executive Director; Chris Neilson, BCBA President-elect; and Barbara Sunshine, BCBA President



Left to right: Jordana Goldstein, BCBA Board member; Scott Golden, Broward County Christian Lawyers Association; Allison Bethel, BCBA Board member, Robert Morris, Puerto Rican Bar Association; Nydia Menendez, Puerto Rican Bar Association; Alan Fishman, North Broward County Bar Association President and BCBA Board member; Morrie Levine, BCBA Board member; Bruce Weihe, BCBA Board member; Roshawn Banks, BCBA Board member; Jay Kim, Asian-Pacific Bar Association and Michael Leader, B'nai B'rith Justice Unit

Former Miami Dolphins star
running back/receiver Nat
Moore spoke at the October
Young Lawyers' Luncheon

